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ABSTRACT

The first student consumer lawsuit against a university tried to a conclusion is examined in terms of the court proceedings. Focus is on the legal philosophies presented by both sides and the legal and educational underpinnings by the judge that influenced him not to allow the case to go tc the jury and allowed him to award a directed verdict to the defendant. Criticism about this verdict is offered, and a possible legal rationale is presented as to how such a lawsuit might be offered by the student to assure himself a legal victory. (Author/LBH)

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Ilene Ianniello vs. University of Bridgeport: The Court and the Student's Right to Quality Education

by

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Ilene Ianniello v. University of Bridgeport: The Court and the Student's Right to Quality Education.

The Background

The case cited above first received national attention in Time, "Suing for Not Learning," March 3, 1975, when Mrs. Ianniello, a thirty-three-year old mother of three, sued the University of Bridgeport for failing, in her opinion, to provide some form of substantivity, ~~in her opinion,~~ in regard to a required education methods course, "Methods and Materials in Teaching Basic Business Subjects." A copy of the Time article is attached as Appendix A.

Concerned about the possible outcome of the suit in favor of the plaintiff, the University of Bridgeport had the suit moved from a small claims court to a court of common pleas, where the case was heard by a judge and jury. Showing an interest in the case, a local, Norfolk, Virginia, newspaper, quoting in part from the Wall Street Journal, said: "Higher education may never be the same if a student at the University of Bridgeport succeeds in a suit she recently filed in a small claims court.... This could in fact be an historic case, both for teaching and for consumer protection." The University's Vice-President for Academic Affairs, however, took the matter more seriously: "... if students sue because they say they did not learn anything, that's a different matter. If we lose this, every university in the country will be in trouble." Such reverberrations, however, are unlikely to take place because of both the plaintiff's pleadings and evidence as well as the judge's premature intervention.

The case was finally tried in June, 1977, after a four day trial, with the judge rendering a directed verdict in favor of the defendant. In other words, the judge decided not to give the case to the jury, thus disbarring the jury

itself from weighing the testimony and arriving at its own independent judgment. Had the judge given the case to the jury and still disagreed with its finding, he could have overruled the jury through a "directed verdict for the defendant, the evidence notwithstanding."

In this paper, the nature of the evidence, the verbatim verdict of the judge, and the attorneys' efforts for both sides will be examined, and from this analysis little doubt remains as to why Mrs. Ianniello lost her case, namely, (1) the weak legal arguments presented in her behalf and (2) her failure to establish her case through the legal rule of "a fair preponderance of the evidence."

Source Material

Unfortunately, the proceedings of the trial were not listed in the Atlantic Reporter of the National Reporter System and thus a synopsis of the court proceedings were unavailable. The legal as well as the philosophical underpinnings therefore were obtained from the pleadings, briefs, and other related papers obtained through the good offices of Herbert, L. Cohen, Esquire, Cohen and Wolf, P. C. and Attorneys-at-Law, Bridgeport, Connecticut who sent the collection of papers to the National Association of College and University Attorneys, 1 Dupont Circle, Washington, D. C. 20036.

These collection of papers also had a verbatim transcript of the judge's decision, whose identity from the material available, moreover, has never been established. Since his decision not to give the case to the jury for its own ponderings represented the crucial legal turning point, the judge's reasoning takes on a critical overall importance and is subjected to some critical analysis below.

The Plaintiff's Position

The plaintiff through her pleadings charged breach of contract and misrepresentation. Under the breach of contract doctrine, she alleged (1) that the class course content failed to comply substantially with the catalog's course description, (2) that no tests nor any other form of grading or evaluation transpired, (3) that little or no class discussion occurred from which the plaintiff could benefit, (4) that the plaintiff received little or no benefit from the course, and (5) that the University failed to supervise the course or its content. On the other hand, under misrepresentation, Mrs. Ianniello alleged the five charges listed above in the University's failure to fulfill these objectives and to correct them in some manner upon complaint by her, when the University's officials knew that what the University pledged in the catalog failed to mesh with the actual content of the class material. She asked $2,500 in damages as well as such other relief at law and equity the court deemed appropriate. She had one attorney to represent her, Robert K. Lesser, Esquire, of Lesser and Sobel, P. C., and Attorneys-at-Law.

The Defendant's Position

The University of Bridgeport's position was ably argued by Irving J. Kern, Esquire, of Cohen and Wolf, P. C., Attorneys-at-Law, Bridgeport, Connecticut, with two law offices and sixteen practicing attorneys. In its answer, the defendant denied any breach of contract and no wilful misrepresentation. The defense attorney, besides the answer, prepared a "motion for a directed verdict" as well as a "defendant's request to charge" to the jury by the judge. The former prevailed; thus the latter was not used at all.

Through its directed verdict for the defendant, the defense was able to convince the judge not to give the case to the jury for Mrs. Ianniello had failed: (1) to establish through a fair preponderance of the evidence any breach of contract, especially since only Mrs. Ianniello and one other student testified on the plaintiff's side, while a departmental chairman, the class instructor, and six students testified to the "substantial" fulfillment of the University's contractual obligations, (2) to prove any culpability in the alleged misrepresentation, and insofar as damages were concerned, Mrs. Ianniello had, in contrast, received three hours of credit as well as her bachelor's degree and (3) to convince the court that there was any abuse of discretion by the University, the sole means through which a court could interfere in academic matters, leaving to the University instead to determine its own academic policies, as apparent "experts" in the area.

The Judge's Verdict

As noted above, an unknown judge's verbatim reply to the motion for the defendant was also included in the obtained papers. Because of its importance, it is enclosed as Appendix B for it well reveals the judge's conception of the educational issues involved, especially when the legal power brought upon the case by the defense attorney is contrasted with the efforts expended by the attorney for the plaintiff. In short, the plaintiff's attorney did not seem to prepare the case for a "fair preponderance of the evidence" rule. Here a not too rich student wishes to seek justice as well as some form of consumer protection, in this case, quality education, and the establishment monolith, the University, with its more powerful resources therefore prevailed with the judge, his remarks to the contrary. Instead, the judge should have given the case to the jury

rather than holding that the plaintiff had failed to establish a "fair preponderance of the evidence" in her own behalf, especially through the lukewarm legal aid provided by her attorney. Rather, the judge abdicated, without serious concern for the individual consumer, to the non-empirical judgments of the professionals within the University.

In short, as the following passage revealed, the judge himself engaging in a flight of phantasy, while at the same time not wishing nor allowing the jury to do likewise:

> "...It is for the court, as well as the law to appreciate the men of important qualifications set these standards and requirements for all universities. It is a confidence we should have in our educational institutions because they certainly deserve it. . . The jury would be put to a question of surmise, conjecture, and imagination, not fact, to determine whether or not the professor's style and method of teaching in this case was a breach of contract or an insufficient, inadequate performance of the University's obligation to teach,...'

(Appendix B). The judge thus directed "the jury to find the issues on both counts in favor of the defendant."

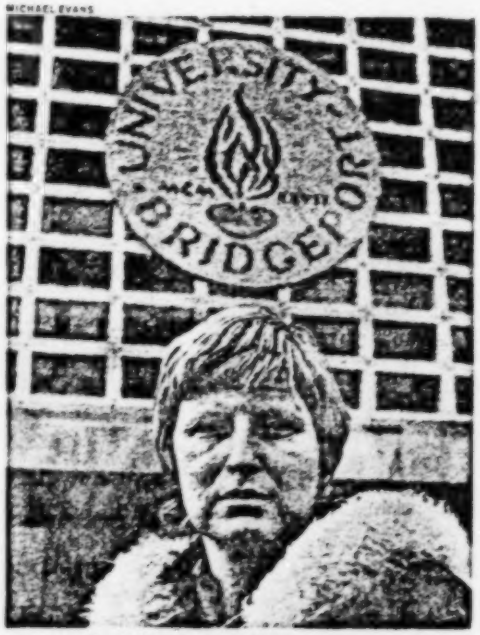
An Analysis and a Critique

This judicial judgment should not be allowed to stand for such a serious abstraction as quality education nor is it something we should allow the courts necessarily to abdicate to the questionable judgments of the university under the disguise of its expertise, when many of us in the teaching profession can readily admit to the grave fragility of that expertise. Within the university, especially in schools of education, faculties have labored over such abstractions as education, teaching, and learning, and

more recently over quality education. There seems to be much to be done through the courts to have them hold the university to a greater responsibility in quality education other than "exercise discretion," especially when a student of modest means wishes to assure herself some form of consumer protection, other than perhaps through the current use of the little sense student evaluation forms. The Ianniello case, according to Mr. Cohen, is "the first case of a student consumer lawsuit against a university which has been actually tried to a conclusion," but that conclusion sadly ended up entirely in the wrong direction insofar as the setting of legal precedent in consumer education was concerned.

To the legal attacks based upon breach of contract and misrepresentation, negligence, either through malfeasance or nonfeasance, might be a third area through which a diligent and concerned lawyer might be able to get a case into the hands of a jury and hopefully obtain a winning verdict. The tilting of the verdict in favor of a university as defendant through a frequency count approach to establish the fair preponderance of evidence rule neither should be allowed as new legal precedents in consumer education are explored. According to a June 8, 1977 letter by Mr. Cohen to the National Association of College and University Attorneys, "Probably the most telling testimony came from six members of the class, who are actually engaged in teaching in various parts of Connecticut, who testified the course was well taught, instructive and helpful, and specifically contradicted the plaintiff in many particulars." Many of us in the discipline of education know too well the commonly held notion of education offering "Mickey Mouse" courses of little substantivity, especially in its "dry-as-dust," required methods courses.

Furthermore, to have to withdraw from or to fail a course in order to seek damages under breach of contract would seem a bit preposterous. Said Mr. Cohen in his above quoted letter in this respect: "Also, it was impressively brought out to the jury that the plaintiff took this course because it was required for graduation and for certification by the State of Connecticut as a teacher. Thus, she was in the position of using the passing grade in the course at the same time that she sought the return of her money." Had Mrs. Ianniello received a grade of D would not in and of itself convince the wisdom of this proposition in terms of course substantivity, unless she were a poorly motivated or ill-equipped student, which from the evidence at hand did not seem to be the case. Instead, one had the contrary impression, namely, that she was a highly motivated student who perceived an emptiness or child-like playfulness within the course and decided to take issue about it with the University and into the courts, a daring piece of action in itself by a mature undergraduate. At least at this point in time, Mrs. Ianniello has established educational history by trying to hold the university to a greater responsibility in quality education.



MRS. IANNIELLO AT THE UNIVERSITY
Her class was "ridiculous."

Suing for Not Learning

Most education majors suffer in silence through dull required courses about "teaching methods." But Mrs. Ilene Ianniello, a senior at the University of Bridgeport, has decided to stage a one-woman revolt. Claiming that the "Methods and Materials in Teaching Basic Business Subjects" course she had to take last year was "worthless," she sued the school to get her tuition and expenses back.

"I've had bad classes before," says Ianniello, "but this was ridiculous. The only thing I learned was how to use the overhead projector." The lone requirement was to hand in a book report. All 14 students in the course, which is required for secondary education majors, got A's last spring semester.

Ianniello, 33 and a mother of three, is suing the university for $400, which represents $150 for tuition plus the cost of books, driving expenses and the legal fees she will incur. She is arguing that the school did not provide the course described in the catalogue and that she did not learn anything.

Assistant Professor Clair Garmen is incredulous, noting that other students in last year's class had no complaints. He admits that he was never "totally satisfied" with giving students A's simply for completing assignments, but "students now need good grades on their records to get jobs."

The Bridgeport administration is frankly worried about the suit and won permission to have it moved from small claims court to the state's court of common pleas for a better test of the principle. "I'm not worried that the professor might not have taught exactly what was in the catalogue," says Vice President for Academic Affairs Warren Carrier. "That's common practice. But if students sue because they say they did not learn anything, that's a different matter. If we lose this, every university in the country will be in trouble."

(Time, March 3, 1975) Appendix A 73
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THE COURT: Well, I think I ought to say, before I start to say something, there is no question that the Court feels counsel, witnesses on both sides were sincere and very helpful to decide the issues of this case. I, looking at the plaintiff's case in the strongest light, I would conclude that the plaintiff's case centered upon one part of what would be a breach of contract. That is, the performance, the teaching of the course by Dr. Garmen. she brought out on her case the style and methods of the course teaching. She complained about it early in the course, I would say. She claimed that the whole style of the professor was not what it should be, that grades were not given and that that was also a bad performance by the professor. I would conclude from her testimony, however sincere she may have been, that she like every other student comes into a course without any expert knowledge of the course such as she is apt to get from the professors in the course that she may be taking. She cannot set herself up as an expert to know exactly and fully how a course should be taught. She is not precluded to come to court with expert authorities and witnesses to establish her case. She has the burden on her complaint to prove by a fair preponderance of the evidence that the course failed to give her what she thought the contract or enrollment into the course should have produced. There is no question that universities, colleges have the academic freedom of determining what is correct certification of programs, course, professors and accomplishments. It is true that the Court should not interfere into that phase of the decisions of the college certification authorities because it is true that courts and jurys would know no more than the plaintiff who is a very intelligent young lady, about the real substance of educating the mass of human students in this country. It is for the court, as well as the law to appreciate the

men of important qualifications set these standards and requirements for all universities. It is a confidence we should have in our educational institutions because they certainly deserve it. So, when we get a cause of action here and there is a difference between a student who feels that the particular course is not being taught properly, her evidence alone cannot stand that weightful so as a jury should have the question of deciding whether there was a failure of performance for achieving a sufficient production of learnable education. The jury would be put to a question of surmise, conjecture and imagination, not fact, to determine whether or not the professor's style and method of teaching in this case was a breach of contract or an insufficient inadequate performance of the university's obligation to teach. There is no question in the Court's mind that courts are the ultimate arbiters of all situations if the case is brought before it on a full display of the intelligence and information which make up the basic foundation of rules and regulations and standards of achievements which the university seeked. Without intelligence and information and witnesses who would bring that kind of testimony to court, there is no way for the courts to substitute its judgments for that of the universities and the faculties that educate the students of this nature. It is not the same as an ordinary building contract or a contract to purchase goods. This is a contract which involves the specialized highly qualified talents and experts to guide and develop the reasoning and intelligence of students. It is something that is not final, such as building a house or a ladder or an automobile. The performance has many many reasons to keep constant thinking, innovations into the system of teaching. And as such, no one, but those who are in the field of promoting and bettering education, can keep the universities, the professors and their

product, the school teachers that come from them and all other scientifically and educationally developed people, to be at their best. The performance in this case, whether the plaintiff felt and sincerely felt was not sufficient, adequate and learnable and beneficial toward her obligation of establishing her right to recover by a fair preponderance of the evidence on the First Count. And on the Second Count, the fair preponderance of the evidence, there is no proof that the misrepresentations existed, that she elected to take this course on the basis of an inducement alone or at all. We do not know whether she took her course, and it hasn't been established by the plaintiff that she would not have taken the course if it was not a required course or that the representations induced her to take the course alone. There is also qualification of all these descriptive terms of courses which may be changed from time to time. Students do not enroll into school with the feeling that if something beneficial may change the existing rules and regulations and catalog descriptions should not be innovated because it was written in the book that they were that because they weren't written in the catalogs. On that count, the Court also feels and believes and finds that the plaintiff failed by her burden, her preponderance of evidence burden to establish that she should recover. Even on the basis of a lesser weight of evidence which is on both counts, she hasn't presented as I find it, a prima facie case on either count for the jury to decide.

I will therefore direct the jury to find the issues on both counts in favor of the defendant.

Will you bring the jury in, please?